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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR SAUL AQUINO,

Defendant and Appellant.

H046234

(Monterey County

Super. Ct. No. 18CR007377)

Defendant Oscar Saul Aquino pleaded no contest to vandalism causing \$400 or more in damage, violating a criminal protective order, and resisting an officer. As part of the plea agreement, he entered a broad waiver of his appellate rights. The trial court placed defendant on three years' formal probation as called for by the plea agreement and imposed various conditions. Defendant appealed and obtained a certificate of probable cause. On appeal, defendant's counsel filed an opening brief in which no issues are raised and asked this court to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436. We sent a letter to defendant notifying him of his right to submit a written argument on his own behalf on appeal. He has not done so.

Finding no arguable appellate issue, we affirm. We will provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed," as required by *People v. Kelly* (2006) 40 Cal.4th 106, 110. We will further include information about aspects of the trial court proceedings that might become relevant in future proceedings. (*Ibid.*)

I. BACKGROUND

A. *Factual Summary*¹

On August 3, 2018, officers with the Marina Police Department responded to reports of a heated verbal domestic incident. A witness told police that she saw defendant yelling at a woman, later identified as the mother of his two children. Officers contacted defendant outside; he approached them in a hostile manner while yelling. Officers pointed a taser at defendant. He said “Shoot me! Go ahead shoot me!” Defendant continued to yell and act aggressively as officers attempted to calm him. Eventually, officers were able to approach defendant and handcuff him. As they did, they smelled alcohol on him. Defendant yelled “Norteño” and “VSN” as he walked to the patrol vehicle. Officers understood “VSN” to stand for “Varrio Seaside Norteño.”

After defendant’s arrest, police officers noticed that the doors on one side of the patrol vehicle were dented. Footprints, which matched the tread on defendant’s shoes, indicated defendant had kicked the doors in.

A records check revealed the existence of a protective order permitting only peaceful contact between defendant and the mother of his children, for the exchange of the children and court visitation.

During a September 5, 2018 interview, defendant told a probation officer that he was intoxicated at the time the offense.

B. *Procedural History*

The Monterey County District Attorney filed a complaint on August 6, 2018, charging defendant with vandalism causing \$400 or more in damage, (Pen. Code, § 594, subd. (b)(1);² count 1), a felony; violating a criminal protective order (§ 166, subd. (c)(1)), a misdemeanor; and resisting an officer (§ 148, subd. (a)(1)), a misdemeanor. On August 15, 2018, defendant pleaded no contest to all charges on the

¹ The facts are taken from the probation officer’s report.

² All further statutory references are to the Penal Code unless otherwise indicated.

conditions that he would receive felony probation and, if he completed a year of probation with no violations and paid full restitution, the vandalism offense would be “reducible to a misdemeanor” under section 17, subdivision (b). Before defendant entered his pleas, the court noted that it would “have to impose the 52-week domestic violence counseling.” As part of his plea agreement, defendant waived “all rights regarding state and federal writs and appeals,” “includ[ing], but . . . not limited to, the right to appeal [his] conviction, the judgment, and any other orders previously issued by this court.” Defendant further agreed “not to file any collateral attacks on [his] conviction or sentence at any time in the future.”

The trial court held a sentencing hearing on September 14, 2018. As called for by the plea agreement, the court suspended imposition of sentence and placed defendant on formal probation for three years subject to various conditions. Among other probation conditions, the court imposed gang conditions,³ a condition that defendant “[a]ttend self-help or other support group meetings as directed by [his] probation officer,” and a condition that defendant serve 180 days in County Jail. Defense counsel objected to the self-help condition on vagueness grounds. The court responded, “I’m assuming such as AA/NA. But the Court can’t order a religious-based program. So that’s why they’ve referred to it as self-help.” Defense counsel reiterated her objection. She also objected to the gang conditions as vague and overbroad. The court overruled those objections.

The court awarded defendant a total of 85 days of presentence credits, consisting of 43 days of actual custody and 42 days of conduct credits.

³ Specifically, the court imposed conditions that defendant “not visit or remain in any known gang-gathering area” and “not possess, wear, use, or display any item associated with membership or affiliation in a gang, including, but not limited to, any insignia, emblem, button, badge, cap, hat, scarf, bandanna [*sic*], or any article of clothing, hand sign, or paraphernalia, including the color red.” The court specified that the term “gang,” as used in the probation conditions, referred to criminal street gang as defined in section 186.22.

The court ordered defendant to pay \$2,678.93 in victim restitution to the Marina Police Department and imposed the following fines and fees: a \$600 restitution fine (§ 1202.4, subd. (b)(1)) with an additional \$600 probation revocation fine, which was suspended pending successful completion of probation (§ 1202.44); a \$120 court operations assessment fee (§ 1465.8, subd. (a)(1)); a \$90 court facilities assessment fee (Gov. Code, § 70373); and a \$10 local crime prevention fee (§ 1202.5, subd. (a)) plus penalty assessments for a total of \$41.⁴ The court also ordered defendant to pay an unspecified criminal justice administrative booking fee in accordance with his ability to pay. (Gov. Code, §§ 29550.1, 29550.2.) And the court ordered defendant to pay \$864 for the cost of preparation of the probation report plus \$81 per month for the cost of supervised probation (§ 1203.1b).

Defendant timely filed a notice of appeal and indicated an intent to challenge both the validity of his plea and his sentence or other matters occurring after the plea. He requested a certificate of probable cause, stating that he “contests the validity of sentence including probation conditions, which may implicate plea/appellate waiver neces[s]itating certificate of probable cause.” The trial court granted that request.

II. DISCUSSION

Having examined the entire record, we conclude that there are no arguable issues on appeal.

III. DISPOSITION

The judgment is affirmed.

⁴ The court orally imposed a \$120 court operations assessment fee (§ 1465.8, subd. (a)(1)) and a \$90 court facilities assessment fee (Gov. Code, § 70373). The court minutes state that the court imposed “a Court Operations Assessment of \$40.00 times the number of convictions; for a total of \$40.00 (PC 1465.8(a)(1))” and “a Court Facilities Assessment of \$30.00 times the number of misdemeanor/felony convictions; for a total of \$30.00 (GC 70373).” The record of the oral pronouncement of the court controls over the clerk’s minute order. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.)

ELIA, ACTING P. J.

WE CONCUR:

GREENWOOD, P. J.

PREMO, J.